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ZOOM VIDEO COMMUNICATIONS, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

14 *IN RE: ZOOM VIDEO COMMUNICATIONS*
15 *INC. PRIVACY LITIGATION,*

Master Case No. 5:20-cv-02155-LHK

16 This Documents Relates To:
17 All Actions /

**DECLARATION OF KATHLEEN HARTNETT
IN SUPPORT OF ZOOM VIDEO
COMMUNICATIONS, INC.'S MOTION TO
ADJUST CASE DEADLINES PURSUANT TO
L.R. 6-3**

DECLARATION OF KATHLEEN HARTNETT PURSUANT TO LOCAL RULE 6-2

I, Kathleen Hartnett, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following statements are true:

1. I am an attorney duly licensed to practice before all courts of the State of California, this Court, as well as other state and federal courts. I am a member of the firm Cooley LLP. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify regarding those matters. I respectfully submit this declaration in support of the motion of Defendant Zoom Video Communications, Inc. (“Zoom”) to adjust case deadlines.

2. On July 17, 2020, the Court issued an Order Adopting Proposed Briefing Schedule; Denying Request to Stay Discovery; Continuing Case Management Conference (“July 17 Scheduling Order”) (ECF No. 113). The July 17 Scheduling Order required: a consolidated amended complaint to be filed on or before July 30, 2020; any motion to dismiss to be filed on or before September 14, 2020; and any opposition to the motion to dismiss to be filed on or before October 14, 2020.

3. On July 30, 2020, Plaintiffs Saint Paulus Lutheran Church, Heddi N. Cundle, Lisa T. Johnston, Therese Jimenez, M.F., Kristen Hartmann, Isabelle Gmerek, Oak Life Church, Stacey Simins, Caitlin Brice, and Cynthia Gormezano (collectively, “Plaintiffs”), filed their Consolidated Amended Class Action Complaint against Defendant Zoom Video Communications (“Zoom”) (ECF No. 114.)

4. On August 7, 2020 this Court entered a Case Management Order. (ECF No. 117.) This Order required Plaintiffs to file their Motion for Class Certification on March 26, 2021, Zoom to file its Opposition to the Motion for Class Certification by April 2021, and Plaintiffs to file their Reply by May 7, 2021. (ECF No. 117 at 1.) The Court ordered the close of fact discovery to be August 28, 2021. (*Id.*)

5. On October 28, 2020, Plaintiffs filed their First Amended Consolidated Class Action Complaint. (ECF No. 126).

6. On December 2, 2020, Zoom filed its Motion to Dismiss the First Amended Consolidated Class Action Complaint (the “FAC”). (ECF No. 134.)

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1 7. On December 30, 2020, Plaintiffs filed their Opposition to Zoom's Motion to
2 Dismiss. (ECF No. 141.)

3 8. On January 21, 2021, Zoom filed its Reply in Support of its Motion to Dismiss.
4 (ECF No. 147.)

5 9. On February 5, 2021, the Parties submitted a Joint Statement to Magistrate Judge
6 van Keulen, in which Zoom agreed to produce certain documents based on the scope of the FAC.

7 10. On February 22, 2021, the parties submitted a Joint Stipulation to Extend Class
8 Certification Deadlines (ECF No. 161), which this Court so-ordered on February 23, 2021 (ECF
9 No. 162). This extended Zoom's deadline for rolling production of items it agreed to produce as
10 of the February 5, 2021 Joint Statement, set by Magistrate Judge van Keulen (ECF No. 152), from
11 March 5, 2021 to April 9, 2021 (ECF No. 156 at 4). Plaintiffs deadline to move for Class
12 Certification was extended to June 25, 2021, Zoom's deadline to oppose to August 13, 2021,
13 Plaintiffs' reply to September 3, 2021, and the close of fact discovery to October 29, 2021. (ECF
14 No. 156 at 4-5.)

15 11. On March 11, 2021, this Court entered an Order Granting in Part and Denying in
16 Part Zoom's Motion to Dismiss the FAC, allowing leave to amend. (ECF No. 168.) Plaintiffs'
17 deadline to file any Second Amended Complaint is April 12, 2021.

18 12. On March 23, 2021, the Parties filed a Joint Stipulation extending Zoom's deadline
19 to file an Answer to the First Amended Complaint until 21 days after Plaintiffs' deadline to file a
20 Second Amended Complaint, or, in the event a Second Amended Complaint is filed, relieving
21 Zoom of its obligation to answer, pending resolution of an anticipated Motion to Dismiss the
22 Second Amended Complaint.

23 13. Zoom has repeatedly met and conferred with Plaintiffs regarding the scope and
24 proportionality of the discovery Plaintiffs have requested to date, which has consistently been
25 overbroad, even when considering the scope of Plaintiffs' claims as asserted in the FAC prior to
26 the MTD Order.

27 14. The parties have met and conferred at least ten times regarding the scope of
28 Plaintiffs' RFPs, including three calls which focused specifically on Plaintiffs' overbroad proposed

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1 custodians, and five calls focused at least in part on Plaintiffs' overbroad proposed search terms.

2 15. On December 23, 2020, Plaintiffs filed a Notice of Deposition of Zoom Pursuant to
3 Federal Rule of Civil Procedure 30(b)(6), noticing 66 topics to be covered by this deposition.

4 16. On January 24, 2021, Zoom responded, proposing 11 topics with multiple sub-parts
5 for a total of 22 topics, tied to issues in the FAC.

6 17. On March 16, 2021, Plaintiffs proposed 19 topics with multiple sub-parts for a total
7 of 65 topics, which Zoom believes are overbroad as to the FAC, and more so unrelated to the claims
8 remaining in the complaint following the MTD decision.

9 18. The Parties met and conferred regarding the scope of these topics on January 8,
10 2021, and again on March 18, 2021, and March 26, 2021.

11 19. The Parties have sought relief from Magistrate Judge van Keulen on three occasions
12 regarding discovery disputes, which were unable to be resolved between the parties. (ECF Nos.
13 135, 150, 157.)

14 20. The Parties today submitted a fourth joint statement regarding a discovery dispute.

15 21. Zoom has met and conferred with Plaintiffs regarding issues related to the motion
16 to adjust case deadlines.

17 22. On March 18, 2021, the parties engaged in a meet and confer during which
18 Plaintiffs' counsel stated that they "deserve discovery to amend" their complaint. (Hartnett Decl.
19 Ex. 1, 3/19 Email from K. Hartnett to T. Redenbarger et al.).

20 23. On March 26, 2021, Zoom sent Plaintiffs a proposed stipulation to modify case
21 deadlines and informed Plaintiffs that Zoom would move this Court to adopt that schedule and stay
22 discovery pending resolution of Zoom's Motion to Dismiss the Second Amended Complaint absent
23 an agreement of the parties. The parties had a meet-and-confer call following that email on which
24 Zoom requested Plaintiffs' consent to the proposed case schedule modification. Plaintiffs'
25 counsel rejected Zoom's request for a stay, but stated that they would take back Zoom's proposed
26 case schedule modification. Plaintiffs' counsel ultimately rejected the proposal via email on
27 March 29. (Ex. 2, 3/29 Email from T. Redenbarger to K. Hartnett et al.).

28 24. Zoom has ceased the core practices about which Plaintiffs complain.

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1 25. Zoom has implemented multiple additional measures, including user education, to
 2 help prevent and address meeting disruptions. *See, e.g.,* [https://blog.zoom.us/keep-uninvited-](https://blog.zoom.us/keep-uninvited-guests-out-of-your-zoom-event/)
 3 [guests-out-of-your-zoom-event/](https://blog.zoom.us/keep-uninvited-guests-out-of-your-zoom-event/).

4 26. Zoom no longer uses the three third-party integrations at issue. *See, e.g.,*
 5 <https://blog.zoom.us/zoom-use-of-facebook-sdk-in-ios-client/>;
 6 <https://www.nytimes.com/2020/04/02/technology/zoom-linkedin-data.html>.

7 27. Zoom's encryption is now "end-to-end" by Plaintiffs' definition.
 8 <https://blog.zoom.us/zoom-rolling-out-end-to-end-encryption-offering/>.

9 I declare under penalty of perjury pursuant to the laws of the United States of America that
 10 the foregoing is true and correct. Executed on March 29, 2021.

11
 12 /s/ Kathleen Hartnett

13 Kathleen Hartnett (SBN 314267)

14 COOLEY LLP
 15 Attorneys for Defendant
 16 ZOOM VIDEO COMMUNICATIONS, INC.
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